TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1913.~~ 1914

No. ~~1067.~~ 479

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

G. W. BROUGHTON, ALIAS GIDEON W. BROUGHTON.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ALABAMA.

FILED MAY 13, 1914.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 1064.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

G. W. BROUGHTON, ALIAS GIDEON W. BROUGHTON.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ALABAMA.

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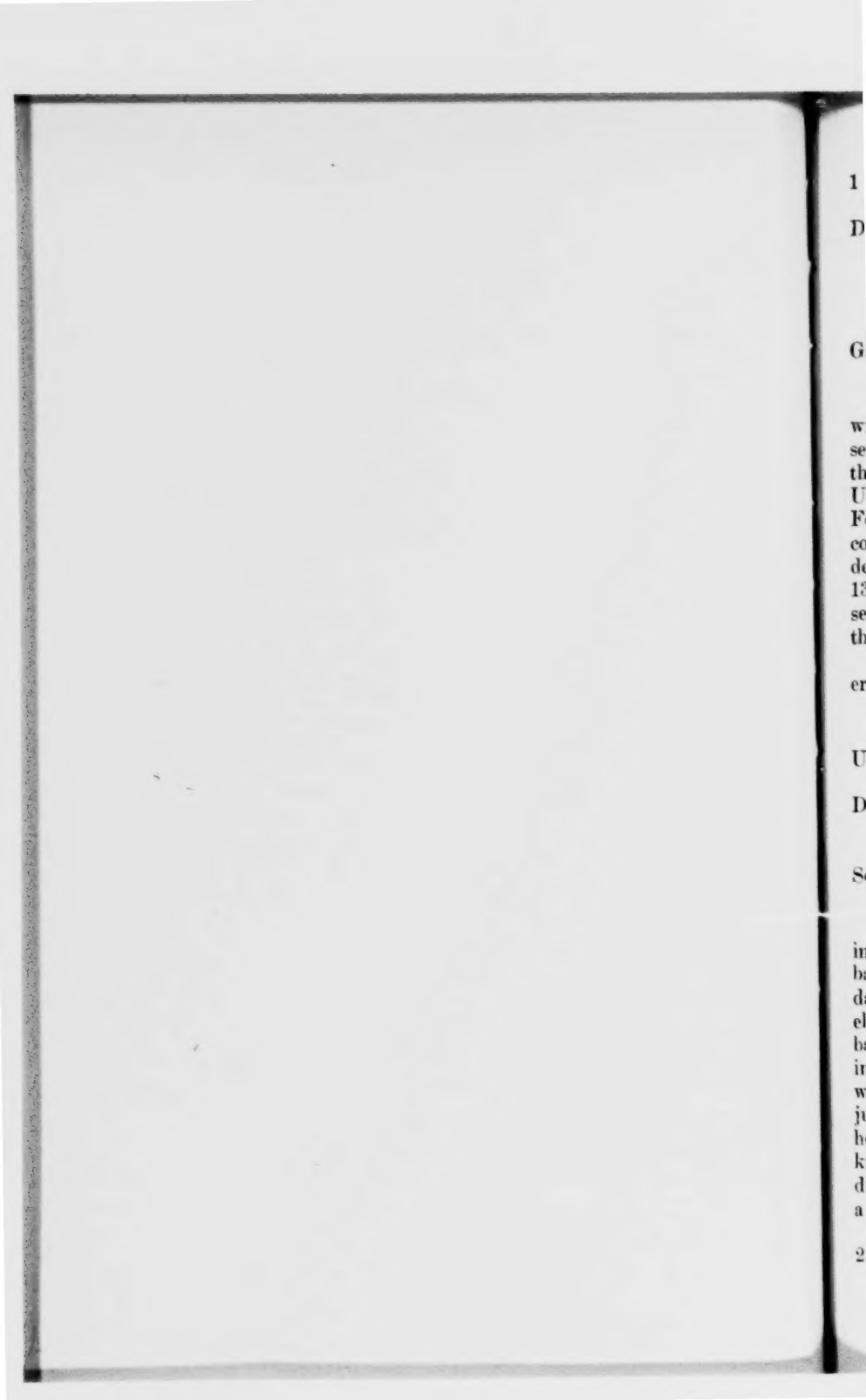

1 *Name of court, style of case, etc.*

District Court of the U[illegible] United States for the Southern District of Alabama.

THE UNITED STA[illegible] STATES OF AMERICA
ver[illegible]
G. W. BROUGHTON, ALIAS [illegible]AS GIDEON W. BROUGHTON. } No. 4080.

June 3, 1911, indictme[illegible]ment presented and filed charging defendant with holding one E. W. [illegible]W. Fields in or to a condition of involuntary servitude or a condition [illegible]ion of peonage in violation of section 5526 of the Revised Statutes an[illegible] and section 269 of the Criminal Code of the United States; February [illegible]ary 9, 1914, demurrers filed to said indictment; February 10, 1914, a nol[illegible] nolle prosequi taken and entered as to the first count of the indictment, [illegible]ont, and the case argued and submitted on the demurrers to the second [illegible]nd and third counts of the indictment; March 13, 1914, opinion and orc[illegible] order by the court sustaining demurrers to the second and third counts[illegible]nts; March 30, 1914, writ of error sued out by the United States.

The transcript of the [illegible]he record and proceedings under said writ of error being as follows:

[illegible]

Indictment.

UNITED STATES OF AMERI[illegible]ERICA:

District Court of the Uni[illegible] United States for the Southern Division of the Southern District[illegible]rict of Alabama, of the May term, 1911.

SOUTHERN DISTRICT OF A[illegible] Alabama.
S[illegible] *Southern Division.*

The grand jurors of th[illegible] the United States, chosen, selected, and sworn in and for the Southern[illegible]ern Division of the Southern District of Alabama, upon their oath do[illegible] do find and present that on, to wit, the eighth day of May, in the year [illegible]r of our Lord one thousand nine hundred and eleven, within the Southe[illegible]hern Division of the Southern District of Alabama, and within the jur[illegible]jurisdiction of this court, and before the finding of this indictment, G. [illegible]. W. Broughton, alias Gideon W. Broughton, whose name, other than [illegible]n as herein stated, is unknown to this grand jury, late of the division [illegible]on and district aforesaid, did then and there hold E. W. Fields, whos[illegible]ose name, other than as herein stated, is unknown to the grand jury[illegible]ury, in a condition of peonage; that is to say, did hold the said E. W. F[illegible]. Fields in involuntary servitude to work out a debt which the said G. [illegible]. W. Broughton, alias Gideon W. Broughton, then and there cla[illegible]claimed that the said E. W. Fields then and
2 there owed the s[illegible]e said G. W. Broughton, alias Gideon W. Broughton, contra[illegible]rary to the form of the statute in such case

made and provided and against the peace and dignity of the United States of America.

SECOND COUNT.

And the grand jurors aforesaid, upon their oaths aforesaid, do further find and present that on, to wit, the eighth day of May, in the year of our Lord one thousand nine hundred and eleven, within the Southern Division of the Southern District of Alabama, and within the jurisdiction of this court, and before the finding of this indictment, G. W. Broughton, alias Gideon W. Broughton, whose name, other than as herein stated, is unknown to this grand jury, late of the division and district aforesaid, did then and there hold E. W. Fields, whose name, other than as herein stated, is unknown to this grand jury, in a condition of peonage; that is to say, did hold the said E. W. Fields in involuntary servitude to work out a debt which the said G. W. Broughton, alias Gideon W. Broughton, then and there claimed that the said E. W. Fields then and there owed the said G. W. Broughton, alias Gideon W. Broughton; that is to say, that the said E. W. Fields was, to wit, at the July term, nineteen hundred and ten, of the County Court of Monroe County, in the State of Alabama, convicted in said court of the offense of selling mortgaged property and was fined the sum of fifty dollars, and judgment was rendered against him by said court for the amount of said fine and also for the further and additional sum of sixty-nine dollars and seventy cents cost; and thereupon the said G. W. Broughton, alias Gideon W. Broughton, confessed judgment with the said E. W. Fields in said court for said fine and cost, and the said G. W. Broughton, alias Gideon W. Broughton, did, after the conviction of the said E. W. Fields as aforesaid, and before the finding of this indictment, at the request of the said E. W. Fields, pay the said sum of one hundred and nineteen dollars and seventy cents in settlement of said fine and cost, and by reason of said payment the said E. W. Fields became and was indebted to the said G. W. Broughton, alias Gideon W. Broughton, in the said sum of one hundred and nineteen dollars and seventy cents; and thereupon the said E. W. Fields did enter into a contract in writing with the said G. W. Broughton, alias Gideon W. Broughton, whereby the said E. W. Fields agreed to work and labor for him, the said G. W. Broughton, alias Gideon W. Broughton, on the plantation of the said G. W. Broughton,
3 alias Gideon W. Broughton, in Monroe County, and under his direction as a farm hand and logging hand to pay said sum of one hundred and nineteen dollars and seventy cents for the term of nineteen months and twenty-nine days, at the rate of six dollars per month, together with board, lodging, and clothing during the said time of hire, said time of hire commencing on the eighth day of July, nineteen hundred and ten, and ending on, to wit, the seventh day of March, nineteen hundred and twelve; which said contract was substantially in words and figures as follows:

"LABOR CONTRACT.

"THE STATE OF ALABAMA,

"*Monroe County, County Court:*

"Whereas, at the July term, 1910, of the county court, held in and for said county, I, E. W. Fields, was convicted in said court of the offense of selling mortgaged property and fined the sum of fifty and no/100 dollars, and judgment has been rendered against me for the amount of said fine, and also in the further and additional sum of sixty-nine & 70/100 dollars, cost in said cause, and whereas G. W. Broughton, together with J. W. Broughton, Leroy Fields, and Lewy Fields, have confessed judgment with me in said court for said fine and cost. Now, in consideration of the premises, I, the said E. W. Fields, agree to work and labor for him, the said G. W. Broughton, on his plantation in Monroe County, Alabama, and under his direction as a farm hand & logging hand to pay fine and cost for the term 19 months and 29 days at the rate of $6.00 dollars per month, together with my board, lodging, and clothing during the said time of hire, said term of hire commencing on the 8 day of July, 1910, and ending on the 7th day of Mch., 1912, provided said work is not dangerous in its character.

"Witness our hands this 8 day of July, 1910.

"E. W. FIELDS.
"G. W. BROUGHTON.

"Witness:
"JOHN M. COWELL."

That said contract was signed in open court and was approved by I. B. Slaughter, as judge of said county court of Monroe County on the eighth day of July, nineteen hundred and ten; that after the said contract was signed by said E. W. Fields the said E. W. Fields did work and labor for him, the said G. W. Broughton, alias Gideon W. Broughton, and during the time the said E. W. Fields was so working for said G. W. Broughton, alias Gideon W. Broughton as aforesaid, the said G. W. Broughton, alias Gideon W. Broughton, did threaten the said E. W. Fields that if he, the said E. W. Fields, refused to perform work and labor for said G. W. Broughton, alias Gideon W. Broughton, and to work out the said debt, he, the said G. W. Broughton, alias Gideon W. Broughton, would have the said E. W. Fields arrested and put in jail; and that the said E. W. Fields did not, after said threats were so made, voluntarily perform work and labor for said G. W. Broughton, alias Gideon W. Broughton, but, coerced and intimidated by the said threats of the said G. W. Broughton, alias Gideon W. Broughton as aforesaid, said E. W. Fields did against his free will continue to work and labor for said G. W. Broughton, alias Gideon W. Broughton, under the said contract until a later date, towit, on or about the 14th day of September, nineteen hundred and ten; and the grand jurors aforesaid, on their oath aforesaid, do charge and present that the

said G. W. Broughton, alias Gideon W. Broughton, did, in the manner aforesaid, hold the said E. W. Fields in a condition of peonage, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

THIRD COUNT.

And the grand jurors aforesaid, upon their oath aforesaid, do further find and present that on, towit, the eighth day of May, in the year of our Lord one thousand nine hundred and eleven, within the Southern Division of the Southern District of Alabama, and within the jurisdiction of this court and before the finding of this indictment, G. W. Broughton, alias Gideon W. Broughton, whose name, other than as herein stated, is unknown to this grand jury, did then and there arrest and cause to be arrested one E. W. Fields, whose name, other than as herein stated, is unknown to the grand jury, for the purpose of compelling the said E. W. Fields to, by voluntary servitude, pay a debt which the said G. W. Broughton, alias Gideon W. Broughton, claimed that the said E. W. Fields owed him, the said G. W. Broughton, alias Gideon W. Broughton; that is to say, the said G. W. Broughton, alias Gideon W. Broughton, after the happening of the matters and things set forth in the second count of this indictment, which is here referred to, did appear before one I. B. Slaughter, who was then and there the judge of the county court of Monroe County, within the said division and district, on, towit, the fifteenth day of September, nineteen hundred and ten, and did make and swear to an affidavit in words and figures as follows, towit:

"AFFIDAVIT AND COMPLAINT—VIOLATING CRIMINAL CONTRACT.

"The State of Alabama,

"*Monroe County, County Court:*

"Before me, I. B. Slaughter, judge of the county court of said county, personally appeared G. W. Broughton who, being duly sworn, says that he has probable cause for believing and does believe that E. W. Fields, whose given name is to affiant unknown—on whom a fine of fifty dollars was imposed in the county court of Monroe County, Alabama, at the July term, 1910, of said court, for the offense of selling mortgaged property, who in open court signed a written contract approved by the judge of said court, whereby in consideration of G. W. Broughton and ——— becoming his sureties on a confession of judgment for the fine and cost, agreed to perform farm labor for the said G. W. Broughton at the rate of six dollars per month, for 19 months and 29 days, and who after being released on such confession of judgment, failed or refused, without a good and sufficient excuse to perform said labor for said G. W. Broughton, which in said contract he promised and agreed to perform. That said contract was approved by the judge of said court and was filed

for record as required by law in said county within the past twelve months, against the peace and dignity of the State of Alabama.

"G. W. BROUGHTON.

"Sworn to before me 15th day of September, 1910.

"I. B. SLAUGHTER,

"*Judge of the County Court.*"

And thereupon a warrant was issued by the said I. B. Slaughter, judge as aforesaid, for the arrest of the said E. W. Fields, which warrant was duly executed; and the grand jurors aforesaid, upon their oath aforesaid, do further charge and present that the object and purpose of the said G. W. Broughton, alias Gideon W. Broughton, in making said affidavit and causing the arrest of the said E. W. Filds was, by means of said proceedings to cause and compel the said E. W. Fields to, by involuntary servitude, work out the debt which the said G. W. Broughton, alias Gideon W. Broughton, then and there claimed that the said E. W. Fields owed him, the said G. W. Broughton, alias Gideon W. Broughton; wherefore, the grand jurors aforesaid, upon their oath aforesaid, do find and present that
6 the said G. W. Broughton, alias Gideon W. Broughton, did, in the manner aforesaid, arrest the said E. W. Fields, and did cause the said E. W. Fields to be arrested, and did aid in the arrest of the said E. W. Fields, to be held in a condition of involuntary servitude, to work out a debt which the said G. W. Broughton, alias Gideon W. Broughton, then and there claimed that the said E. W. Fields owed him, the said G. W. Broughton, alias Gideon W. Broughton; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

WM. H. ARMBRECHT,

U. S. Attorney, Southern District of Alabama.

(Endorsed:) No. 4080. United States District Court, Southern District of Alabama. United States vs. G. W. Broughton. Indictment for violation of section 5526, R. S., and section No. 269, Criminal Code. A true bill. W. E. Cammack, foreman. Filed in open court June 3rd, 1911. Rich'd Jones, clerk.

Demurrers to Indictment.

District Court of the United States for the Southern District of Alabama.

UNITED STATES *vs.* G. W. BROUGHTON. } Indictment No. 4080.

Comes the defendant and demurs to count two (2) of the indictment, and for grounds of demurrer assigns the following:

1. For that said count charges no offense against the laws of the United States.

2. For that said count of the indictment shows that the defendant was holding said E. W. Fields as a convict duly sentenced under the laws of the State of Alabama, in accordance with the terms of sections 7632, 7633, 7634, 7635, 6846, of the Code of Alabama of 1907.

3. For that said count shows on its face that the said E. W. Fields was convicted and duly fined by the judge of a court of competent jurisdiction of selling mortgaged property, which was an offense against the laws of the State of Alabama; that upon said conviction and the assessing of said fine and the fixing of said costs, the said court allowed the said E. W. Fields and the defendant herein to confess judgment for the amount of said fine and costs, which was in accordance with the terms of section 7632 of the Code of Alabama, in words as follows:

7 "7632. Confession of judgment by defendant for fine and costs: When a fine is assessed the court may allow the defendant to confess judgment, with good and sufficient sureties, for the fine and costs."

That thereupon the said E. W. Fields did enter into a written contract with the defendant, which is set out in said count, under the terms of which the said E. W. Fields did agree to work and labor for the defendant for the period of time set out therein.

That thereupon the said Fields failing and refusing to perform the work and labor for the defendant, in accordance with the terms of said contract, the defendant threatened the said Fields with criminal prosecution, which threatened prosecution was for a violation of section 6846 of the Code of Alabama, in words as follows:

"6846. Failure of defendant to perform contract with surety confessing judgment for fine and costs: Any defendant on whom a fine is imposed on conviction for a misdemeanor, who in open court signs a written contract, approved in writing by the judge of the court in which the conviction is had, whereby, in consideration of another becoming his surety on a confession of judgment for the fine and costs, agrees to do any act, or perform any service for such person, and who, after being released on such confession of judgment, fails or refuses without good and sufficient excuse, to be determined by the jury, to do the act or perform the service which in such contract he promised or agreed to do or perform, must, on conviction, be fined not less than the amount of damages which the party contracting with him has suffered by such failure or refusal, and not more than five hundred dollars; and the jury shall assess the amount of such damages; but no conviction shall be had under this section unless it is shown on the trial that such contract was filed for record in the office of the judge of probate of the county in which the confession of judgment was had within ten days after the day of the execution thereof."

And the defendant demurs to the third count (3) of the indictment and for grounds of demurrer sets out demurrers 1, 2, and 3 to count two, and in addition thereto the following:

4. That thereupon, as shown on the face of count three of the indictment, upon the failure of said E. W. Fields to perform work and

labor for the defendant in accordance with the terms of said contract the defendant made the affidavit against the said E. W. Fields, as set out in said count, upon which a warrant of arrest was duly
8 issued and executed, under the terms of section 6846 of the Code of Alabama, as hereinabove set out.

The defendant further demurs to counts two and three each severally and separately, and for grounds of demurrer alleges the following:

5. Because the facts averred in each of said counts do not constitute a holding, arrest, or returning of the said Fields to a condition of peonage within the meaning of section 5526 of the Revised Stat- of the United States.

6. Because the facts averred do not show that the defendant caused to be held, arrested, or returned, or that he did in any manner aid in the arrest or returning of the said Fields to a condition of peonage within the meaning of section 5526 of the Revised Statutes of the United States.

7. That the facts averred in said counts do not show that the defendant held the said Fields to involuntary servitude or labor as a peon in liquidation of any debt or demand claimed by the defendant against said Fields within the meaning of section 1990 of the Revised Statutes of the United States.

F. W. HARE,
Solicitor for Defendant.
JNO. MCDUFFIE,
Solicitor.
WM. L. MARTIN,
Assistant Attorney General for the State of Alabama.

Filed February 9th, 1914. Rich'd Jones, clerk.

Order of nol pros as to first count of indictment and submission on demurrers to second and third counts of indictment.

Tuesday, February 10th, A. D. 1914. Present, honorable Harry T. Toulmin, judge, presiding.

THE UNITED STATES
vs.
G. W. BROUGHTON. } No. 4080.

Indictment under section 5526, R. S., & section 269, C. C.

This day comes the United States by their attorneys, O. D. Street and A. D. Pitts, and by leave of the court enters a nolle prosequi herein as to the first count of the indictment.

And the case now coming on to be heard on the demurrers filed to the second and third counts of the indictment, and the same being argued by the attorneys pro and con, is submitted thereon and taken under consideration by the court.

District Court of the United States for the Southern District of Alabama.

UNITED STATES
v.
G. W. BROUGHTON. } No. 4080.

Indictment for violation of sec. 5526, R. S., & sec. 269, Penal Code.

On demurrers to indictment.

O. D. Street, special asst. U. S. attorney, Birmingham, Ala., for plaintiffs.
Alex D. Pitts, U. S. attorney, Mobile, Ala.
F. W. Hare, Monroeville, Ala., for defendant.
John McDuffie, Monroeville, Ala., for defendant.
Wm. L. Martin, Montgomery, Ala., for the State of Alabama.

TOULMIN, Judge:

The first count of the indictment is admitted by the attorneys for the United States to be insufficient, and it is by them nol prossed.

The second count alleges that after said Fields entered upon the performance of the contract mentioned therein, the defendant threatened him that if he refused to work and labor for him to work out said debt he would have him arrested and put him in jail. The indictment fails to allege that everything was said or done by Fields to call for such alleged threat. There is no allegation that he had refused to work, or that he had expressed any unwillingness to work and labor under said contract. The alleged threat was but an idle threat under the circumstances, if intended as a threat at all. It was in fact a simple statement of what the State law provided for and authorized to be done. Moreover, the alleged threat if construed as such was entirely conditional. Its execution was dependant on a contongency, a possible occurrence, which could only be brought about by the act of said Fields. However, he continued to perform work and labor for the defendant, and so far as appears to the contrary from any fact or facts alleged in the indictment without complaint, presumably therefore in compliance with said contract. But it is alleged that after said threat said Fields "did not voluntarily work," and "did, against his free will," continue to work for the defendant under said contract until a later date.

These allegations may be true as a matter of fact based on the presumption that convicts do not voluntarily work, especially when such work is imposed as a punishment for crime committed. But it is alleged that Fields was coerced and intimidated. How, it is
10 not shown. He may have been restrained by the force of law and authority. But what wrongful act of the defendant is alleged by which said Fields was coerced and intimidated? The

court finds none. The allegations in the indictment referred to are mere allegations of conclusions, and not of any fact or facts on which such conclusions are or may be based. There are none from which the court is able to say that said Fields was held to involuntary servitude. There is in fact no direct allegation in said second count that Fields ever refused to work for the defendant or ever left his service. It may be implied from the allegation that Fields continued to work and labor for the defendant under the said contract until on or about the 14th of September, 1910.

Said count, however, charges as a conclusion that the defendant did, in the manner aforesaid, hold said Fields in a condition of peonage. There is no allegation that he was held in or to a condition of involuntary servitude, or that he was arrested and returned to a condition of peonage.

In my opinion the said second and third counts make no case of involuntary servitude or peonage, and the demurrers thereto are sustained.

The facts of this case, as I can learn and understand them from the indictment and demurrers thereto, so far as the same set out the facts, are substantially as follows:

E. W. Fields was convicted in one of the State courts of Alabama of the offense of selling mortgaged property and was sentenced to pay a fine for which judgment and, in addition thereto, court costs was rendered against the defendant by the court, whereupon the defendant in this case, G. W. Broughton, with said E. W. Fields confessed judgment before the court for the aggregate amount of said fine and costs. This was at the July term, 1910, of said court. On the 8th day of July, 1910, said E. W. Fields entered into an agreement to work and labor for said G. W. Broughton on his plantation in Monroe County, Alabama, and under his direction as a farm hand to pay said fine and costs for the term of 19 months and 29 days at the rate of six dollars per month together with his board, lodging and clothing during said term of service, which was to end on the 7th day of March, 1912, and provided "said work is not dangerous in its character." This agreement was signed by both E. W. Fields and G. W. Broughton. It was signed in open court and was approved by the judge of the court. After said agreement was signed said Fields entered the service of, and did work and labor for said Broughton while in his custody and under his direction, and during the time said Fields was so working for said Broughton the
11 latter stated to Fields (called in the indictment "threatened" said Fields), that if he refused to perform work and labor for him he would have him arrested and put in jail. Fields continued to work and labor for said Broughton under the said contract until the 14th day of September, 1910, when, before he had worked out his term of service for the payment of the fine and costs, he refused to work and left the custody and control of said Broughton. On the 15th of September, 1910, Broughton personally appeared before the judge of the court of Monroe County, Alabama, and on oath stated,

in substance and effect, the facts which I have already recited as to the conviction of Fields, the fine and costs, the confession of judgment by Fields and Broughton as surety, the making of the agreement between them and its contents with the averment that Fields had failed and refused, without a good and sufficient excuse, to perform said labor as agreed in said contract. This statement was in form an ordinary affidavit upon which a warrant of arrest was issued and duly executed. It is not shown by any fact or facts that said Fields was, after his arrest under said warrant, returned to a condition of involuntary servitude or peonage or otherwise punished. For all that appears from the facts stated he was not held at all or restrained of his liberty.

The contention of the attorneys for the Government is that by a confession of judgment by the convict with surety, as provided by the law of the State, the convict ceased to be a prisoner, and that he was released from the conviction.

The statutes of the State do not so provide, but do provide, in certain contingencies, for the convict's arrest and trial as for a misdemeanor. The statutes referred to are as follows:

"When a fine is assessed, the court may allow the defendant to confess judgment, with good and sufficient sureties, for the fine and costs." Sec. 7632, Code Ala., 1907.

"Any defendant, on whom a fine is imposed on conviction for a misdemeanor, who in open court signs a written contract, approved in writing by the judge of the court in which the conviction is had, whereby, in consideration of another becoming his surety on a confession of judgment for the fine and costs, agrees to do any act, or perform any service for such person, and who, after being released on such confession of judgment, fails or refuses without good and sufficient excuse, to be determined by the jury, to do the act, or perform the service, which in such contract he promised or agreed to do or perform, must, on conviction, be fined not less than the amount of the damages which the party contracting with him has suffered by such failure or refusal, and not more than five hundred dollars; and the jury shall assess the amount of such damages; but no conviction shall be had under this section unless it is shown on the trial that such contract was filed for record in the office of the judge of probate of the county in which the confession of judgment was had, within ten days after the day of the execution thereof." Sec. 6846, Code Ala., 1907.

12 See also section 6847, Code of Alabama, 1907.

Numerous decisions of the Alabama Supreme Court hold that said statutes are valid as tested by the constitution of the State, and that the conviction provided for under said statutes, and the fine and costs imposed thereon are not paid or a judgment confessed therefor, the defendant must be imprisoned in the county jail or be sentenced to hard labor for the county, and that imprisonment under such conviction is not violative of the provision of said constitution prohibiting imprisonment for debt. The Supreme Court of the

State has repeatedly held that the relation of a debtor and creditor does not exist under the circumstances stated; and that the State has full control over the convict, and until he has by his labor paid the fine and costs, for which he has confessed judgment, he may be arrested and fined or sentenced to hard labor for a refusal to work out his fine and costs, as for an escape. Neither fines nor costs in criminal cases are debts within the meaning of the constitutional provision that no man shall be imprisoned for debt. 55 Ala., 133; 75 Ala., 29.

In 75 Ala., 29, the Supreme Court of Alabama said:

"Where the foundation of the injury complained of was the nonpayment of a debt—a debt created by contract—then by no device could the debtor be imprisoned for its nonpayment."

The court "limited the exemption to contract liabilities" and said, "for it is manifest that fines, forfeitures, mulcts, and damages for a wrong or tort are not a debt within the clause of the constitution," which declares that no person shall be imprisoned for debt. There are money liabilities that are not debts incurred by contract inter partes.

"A convicted defendant may be sentenced to imprisonment, or hard labor, for the nonpayment of the costs of his conviction. Such costs were onpy a money liability but they were not a debt contracted." In the case cited (75 Ala., 29) there was a demurrer to the indictment alleging the unconstitutionality of the statute (the Ala. statute, sec. 6846, Code 1907).

The court said: "The particular objection to the statute is that it authorizes imprisonment for debt. We do not understand the statute. The charge against the defendant was not that he refused to pay a debt he had contracted, but that he ran away from the hard labor imposed on him as a punishment for the offense he had committed. He had not worked out the sentence to hard labor to which he had been condemned. The statute offers to convicted offenders the opportunity of selecting their own task master, the kind of service they will render, and of having a voice in the measure of compensation. * * * The confessed judgment and the contract approved by the court do not satisfy the offended law nor pay the penalty imposed. They are but the condition on which the offender is permitted to select how and whom he will serve, in satisfying the broken law. No one would question the constitutionality of a statute making it indictable for one sentenced to hard labor to escape or flee from the service. We regard the present statute as substantially that identical thing, tempered to the offender by a humane impulse; and hence we hold it constitutional."

There are eight or nine other decisions by the Supreme Court
13 of Alabama following the case last cited on the same subject and to the same effect. A different justice wrote the opinion in each of the several decisions referred to except one. Justice Stone wrote the opinion in 75 Ala., 29, cited supra, and in one of the

latter cases when he was chief justice. 82 Ala., 40–55; 88 Ala., 128–131, 202; 95 Ala., 16; 141 Ala., 100–102; 161 Ala., 75–82.

In 95 Ala., 16, the court said: "The surety confessing judgment with the defendant for the fine and costs becomes the transferee of the State to compel the satisfaction of the fine and costs by exacting the involuntary servitude of the convict 'who himself contracts to change masters for this purpose.'"

In 88 Ala., 202, the court said: "When a defendant having been fined on conviction of a misdemeanor has entered into a written contract to perform service for a surety in a confessed judgment for the fine and costs, and the contract has been duly approved and recorded, he is regarded as performing compulsory service as a punishment, and is criminally liable for a failure or refusal to serve as stipulated."

In 88 Ala., 131, the court said: "Imprisonment as a satisfaction of the fine imposed has always prevailed in Alabama, and in every other country where an enlightened system of criminal law jurisdiction obtains. It is the only practical alternative, where the defendant refuses to pay or secure the fine."

In 82 Ala., 40, the court held that "the confession of judgment in a criminal case by the convict and his surety, under contract between them for the performance of labor or services by the former, makes it a misdemeanor for him to leave or escape from such service, contemplates only the payment of the fine and costs, for the nonpayment of which, under the constitutional provisions, imprisonment or hard labor may be imposed. * * * The hirer becomes the transferee only of the right of the State to compel the satisfaction of such fine and costs."

The defendant in this case invokes the statutes of the State of Alabama, as construed by the supreme court of the State, as his defense and for his protection. He contends that on the law, as applicable to the facts shown in this case, he is not guilty of holding said Fields to a condition of involuntary servitude; nor is he guilty of holding said Fields to a condition of peonage under the facts shown by the record in this case.

The Federal courts uniformly follow and are guided by the decisions of the highest court of the State upon the construction of the constitution and statute of the State, and upon the question whether the statute as construed violated any provision of the State constitution. If the act of the State legislature, as construed by its highest court, conflicts with the Federal Constitution, in a case that involves a question of a right under the Constitution and laws
14 of the United States, it is the duty of this court to so decide and to thus enforce the provisions of the Federal Constitution. 164 U. S., 154; 187 U. S., 16–18; 104 Fed., 473; 117 Fed., 427–430.

The United States Supreme Court, in 164 U. S., cited, supra, said: "We should not be justified in holding the act in violation of the State constitution in the face of clear and repeated decisions of the highest court of the State to the contrary, under the pretext that

we were deciding principles of general constitutional law." 164 U. S., 165; 171 Fed., 974; 172 Fed., 829–831.

The thirteenth amendment of the Constitution of the United States provides that "neither slavery nor involuntary servitude, except as a punishment for crime where the party shall have been duly convicted, shall exist within the United States." There is no doubt that Congress may enforce this amendment by legislation punishing the holding of a person in involuntary servitude, except as a punishment for crime. In the exercise of that power, Congress has enacted what is known as the law denouncing peonage and punishing one who holds another in the condition of involuntary servitude. There is no doubt of the validity of this legislation. Its constitutionality is not questioned.

United States Revised Statutes, sections 1990, 5526, prohibit peonage. What is peonage? It is a condition of compulsory service, based upon the indebtedness of the peon to the master. The basal fact is indebtedness between debtor and creditor. Clyatt v. U. S., 197 U. S., 207. The court in the Clyatt case said:

"We need not stop to consider any possible limit or exceptional case such as * * * the power of the legislature to make unlawful, and to punish criminally, an abandonment by an employee of his post of labor in any extreme cases."

The court clearly implying that there are extreme cases wherein the legislature has the power to criminally punish.

The Supreme Court of Alabama has repeatedly held that section 6846 of the Code of 1907 was constitutional; that the convict Fields was put in the possession and custody of the defendant as the transferee of the State, under whose direction he was to work and labor to pay the fine and costs imposed on said Fields as a punishment for an offense he had committed against the law; that the said convict was not held to pay a debt, but to pay the fine and costs incident to his trial and conviction. Said courts have further held that the relation of debtor and creditor was not created or authorized by said statute, and that imprisonment under the statute for the non-payment of the fine and costs would not be imprisonment for debt. As said by the court in 88 Ala., 131, "It is the only practicable alternative where the defendant refuses to pay or secure the fine." The
15 United States Circuit Court of Appeals for this (5th) circuit said:

"Federal courts will follow the decisions of the State courts of last resort with reference to the construction of state statutes. If we differed from the reasoning of the Alabama Supreme Court we would be constrained by established rules to be governed by decisions of that court as to the construction of the contracts and statutes involved here." 209 Fed. (Adv. Sh), No. 5, p. 840; 183 Fed., 398–399.

The Supreme Court of Alabama have frequently held that the holding the convict for any contractual liability, whether in money or property, is imprisonment for debt within the meaning of the Constitution, and unauthorized. 68 Ala., 303; 79 Ala., 271; 97 Ala., 70.

I am not convinced that there is any right under the Constitution and laws of the United States involved in this case. But if there was, and the is a doubt as to the constitutionality of the Alabama statute in question, it should not be declared unconstitutional. A reasonable doubt must be solved in favor of the legislative action and the statute be sustained. Cooley's Con. Lim., p. 182–3–4; 34 Ala., 320–1.

On the facts of this case, as I find them, and under the law applicable to those facts, my opinion is that the defendant is not guilty of unlawfully holding the said E. W. Fields in a condition of involuntary servitude. I further find that the defendant is not guilty of the charge of holding said Fields in a condition of peonage.

Filed March 13th, 1914. Rich'd Jones, clerk.

Order sustaining demurrers to the second and third counts of the indictment.

Friday, March 13th, A D. 1914. Present, honorable Harry T. Toulmin, judge, presiding.

THE UNITED STATES
vs.
G. W. BROUGHTON. } No. 4080.

Indictment under sec. 5526, R. S., & sec. 269, C. C.

Charge: Peonage.

This case having been argued and submitted on the demurrers filed to the second and third counts of the indictment, and the same being duly considered by the court, the court is of opinion that the facts alleged in each the second and third counts of said indictment, respectively, do not constitute a violation of section 5526, Revised Statutes of United States, and that said demurrers to said counts are well taken and should be sustained. It is, therefore, ordered and adjudged by the court that said demurrers to said second and third counts be, and the same are hereby, sustained. Under the facts of the case so far as they appear from the indictment and the demurrers thereto, and under the law applicable to those facts, the court is further of opinion that the defendant is not guilty as charged in either of said counts of the indictment.

16 *Assignment of errors.*

In the District Court of the United States for the Southern Division of the Southern District of Alabama.

UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,
vs.
G. W. BROUGHTON, ALIAS GIDEON W. BROUGHTON,
defendant in error.

Comes now the United States of America and files the following assignments of error, upon which it will rely upon the prosecution of

its writ of error in the above-entitled cause, and says that on each of the matters and things herein assigned there is manifest error, to the great prejudice and injury of the plaintiff in error:

1. The said District Court committed a manifest error, to the injury of the plaintiff in error, in sustaining the demurrer interposed by the defendant in error to the second count of the indictment.

2. The said District Court committed a manifest error, to the injury of the plaintiff in error, in sustaining the demurrer interposed by the defendant in error to the third count of the indictment.

3. The said District Court committed a manifest error, to the injury of the plaintiff in error, in its judgment in sustaining the demurrer to the second count of the indictment and in deciding that the facts averred in the second count of the indictment did not constitute an offense of peonage under section 5526 of the Revised Statutes of the United States.

4. The said District Court committed a manifest error, to the injury of the plaintiff in error, in its judgment in sustaining the demurrer to the third count of the indictment and in deciding that the facts averred in the third count of the indictment did not constitute an offense of peonage under section 5526 of the Revised Statutes of the United States.

5. The said District Court committed a manifest error, to the injury of the plaintiff in error, in the decision sustaining the demurrer to the second count of the indictment and in deciding that the facts averred in the second count of the indictment did not constitute an offense under section 5526 of the Revised Statutes of the United States, upon a proper construction of said section.

17 6. The said District Court committed a manifest error, to the injury of the plaintiff in error, in the decision sustaining the demurrer to the third count of the indictment and in deciding that the facts averred in the third count of the indictment did not constitute an offense under section 5526 of the Revised Statutes of the United States, upon a proper construction of said section.

7. That the said District Court committed a manifest error, to the injury of the plaintiff in error, in its decision sustaining the demurrer to the second count of the indictment and in deciding that a proper construction of section 5526 of the Revised Statutes of the United States did not embrace within said section and constitute an offense under said section the facts averred in the second count of the indictment.

8. That the said District Court committed a manifest error, to the injury of the plaintiff in error, in its decision sustaining the demurrer to the third count of the indictment and in deciding that a proper construction of section 5526 of the Revised Statutes of the United States did not embrace within said section and constitute an offense under said section the facts averred in the third count of the indictment.

9. The said District Court committed a manifest error, to the injury of the plaintiff in error, in its decision sustaining the demurrer to the second count of the indictment and in deciding that the facts averred in the second count of the indictment did not constitute the offense of peonage within the meaning of section 5526 of the Revised Statutes of the United States.

10. The said District Court committed a manifest error, to the injury of the plaintiff in error, in its decision sustaining the demurrer to the third count of the indictment and in deciding that the facts averred in the third count of the indictment did not constitute the offense of peonage within the meaning of section 5526 of the Revised Statutes of the United States.

11. The said District Court committed a manifest error, to the injury of the plaintiff in error, in its decision sustaining the demurrer to the second count of the indictment and in deciding that the facts averred in the second count of the indictment did not constitute an arrest, or an aiding in the arrest and return of said Fields to a condition of peonage, within the meaning of section 5526 of the Revised Statutes of the United States.

12. The said District Court committed a manifest error, to the injury of the plaintiff in error, in its decision sustaining the
18 demurrer to the third count in the indictment and in deciding that the facts averred in the third count of the indictment did not constitute an arrest, or an aiding in the arrest and return of the said Fields to a condition of peonage, within the meaning of section 5526 of the Revised Statutes of the United States.

13. The said District Court committed a manifest error, to the injury of the plaintiff in error, in its decision sustaining the demurrer to the second count of the indictment and in deciding that the facts averred in the second count of the indictment did not constitute a return of the said E. W. Fields to a condition of peonage within the meaning of section 5526 of the Revised Statutes of the United States, or the causing of him to be returned thereto.

14. The said District Court committed a manifest error, to the injury of the plaintiff in error, in the sustaining of each ground of demurrer to the second count of the indictment. The sustaining of each ground of demurrer is separately assigned for error.

15. The said District Court committed a manifest error, to the injury of the plaintiff in error, in the sustaining of each ground of demurrer to the third count of the indictment. The sustaining of each ground of demurrer is separately assigned for error.

ALEX. D. PITTS,
United States Attorney.
OLIVER D. STREET,
Special Assistant.

Filed March 30th, 1914. Rich'd Jones, clerk.

Petition for writ of error.

In the District Court of the United States for the Southern Division of the Southern District of Alabama.

To the honorable, the judges of the Supreme Court of the United States:

Comes now the United States of America, by Alex. D. Pitts, United States attorney for the Southern District, and O. D. Street, special assistant to the United States attorney for said district, and complains and shows that in the records and proceedings had in a cause lately pending in said court, wherein the United States of America was plaintiff and G. W. Broughton, alias Gideon W. Broughton, was defendant, and also in the rendition on the 13th day of March, A. D. 1914, of the judgment in the above-entitled cause, sustaining a demurrer interposed by the defendant to the second and third counts of the indictment in said United States District Court, manifest error hath happened, to the great damage of the plaintiff therein, as fully appears by the assignments of error hereto attached.

19 Wherefore, said plaintiff prays for a writ of error from the Supreme Court of the United States to said District Court in said cause, and for such other orders and processes as may be necessary to cause to be corrected by the said Supreme Court of the United States the said errors that hath happened to the prejudice of the plaintiff in error.

Dated this the 30th day of March, A. D. 1914.

A. D. PITTS,
United States Attorney.
OLIVER D. STREET,
Special Assistant.

Allowed this the 30th day of March, 1914, by—
HARRY T. TOULMIN, *District Judge.*

Filed March 30th, 1914. Rich'd Jones, clerk.

Order allowing U. S. writ of error.

At a stated term of the District Court of the United States of America for the Southern Division of the Southern District of Alabama, held at the court room in the city of Mobile, on the 30th day of March, A. D. 1914.

Present, the honorable Harry T. Toulmin, district judge.

UNITED STATES OF AMERICA *vs.* G. W. BROUGHTON, ALIAS GIDEON W. BROUGHTON.	No. 4080.

Indictment under sec. 5526, R. S., & sec. 269, Criminal Code of U. S.
(Peonage.)

Upon motion of Alex. D. Pitts, United States attorney for the Southern District of Alabama, and O. D. Street, special assistant,

who prosecuted in this behalf for the United States of America; and upon filing a petition for a writ of error in favor of the United States in said cause, and an assignment of errors; it is ordered that a writ of error be and the same is hereby allowed, to have reviewed in the Supreme Court of the United States the judgment rendered in this cause on the 13th day of March, A. D. 1914.

Citation.

UNITED STATES OF AMERICA:

The President of the United States of America, to G. W. Broughton, greetings:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error sued out and filed in the clerk's office of the District Court of the
20 United States for the Southern Division of the Southern District of Alabama, at Mobile, in criminal case No. 4080, wherein the United States of America is the plaintiff in error, and you, the said G. W. Broughton, are the defendant in error, to show cause, if any there be, why the judgment rendered against the United States of America, as in said writ of error mentioned, should not be corrected and full and speedy justice be done to the parties aforesaid in that behalf.

Witness, the honorable Harry T. Toulmin, judge of the District Court of the United States for the Southern District of Alabama, and the seal of said court affixed at Mobile, this 30th day of March, A. D. 1914.

[SEAL.]

HARRY T. TOULMIN,
United States District Judge,
Southern District of Alabama.

Attest:

RICH'D JONES,
Clerk of the United States District Court,
Southern District of Alabama.

We hereby accept service of the above citation and acknowledge receipt of a copy thereof, this the 30th day of March, A. D. 1914.

JNO. MCDUFFIE,
F. W. HARE,
WM. L. MARTIN,
Attorneys for the Defendant.

Filed March 30th, 1914. Rich'd Jones, clerk.

21 UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable judge of the District Court of the United States for the Southern Division of the Southern District of Alabama, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before

you, or some of you, between the United States of America, plaintiff, and G. W. Broughton, alias Gideon W. Broughton, defendant, a manifest error hath happened, to the great damage of the said United States of America, as by their complaint appears. We being willing that error if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, in judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the United States Supreme Court, together with this writ, so that you have the same at Washington, D. C., within thirty days from the date hereof, in the said United States Supreme Court, to be then and there held, and the record and proceedings aforesaid being inspected, the said United States Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, the 30 day of March, in the year of our Lord one thousand nine hundred and fourteen.

[SEAL.] RICH'D JONES,
Clerk of the District Court of the United States for the Southern District of Alabama.

Allowed by—

HARRY T. TOULMIN,
U. S. District Judge, Southern District of Alabama.

Filed March 30th, 1914. Rich'd Jones, clerk.

22 *Certificate.*

I, Richard Jones, clerk of the District Court of the United States for the Southern District of Alabama, do hereby certify that the foregoing 20 pages numbered 1 to 20 contain a true and correct transcript of the record and proceedings had in said court in criminal case No. 4080, United States versus G. W. Broughton alias Gideon W. Broughton, and that the same constitutes the return to the writ of error sued out by the United States in said case, which writ of error is page 21 of this transcript.

In testimony whereof, I hereto set my hand and affix the seal of said court at Mobile, Alabama, this 13th day of April, A. D. 1914.

[SEAL.] RICH'D JONES, *Clerk.*

(Indorsement on cover:) File No. 24215. S. Alabama, D. C. U. S. Term No. 1064. The United States, plaintiff in error, vs. G. W. Broughton, alias Gideon W. Broughton. Filed May 13th, 1914. File No. 24215.

WASHINGTON : GOVERNMENT PRINTING OFFICE : 1914

In the Supreme Court of the United States.

OCTOBER TERM, 1913.

THE UNITED STATES, PLAINTIFF IN ERROR,
v.
J. A. REYNOLDS. } No. 1063.

THE UNITED STATES, PLAINTIFF IN ERROR,
v.
G. W. BROUGHTON, ALIAS GIDEON W. BROUGHTON. } No. 1064.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ALABAMA.

MOTION BY THE UNITED STATES TO ADVANCE.

Comes now the Solicitor General, and, in accordance with the provisions of the criminal appeals act of March 2, 1907, 34 Stat. 1246, moves the court to advance these causes for joint hearing on a day convenient to the court during the next term.

No. 1064 was an indictment for a violation of section 5526, Revised Statutes, and section 269 of the Criminal Code, and contained three counts. As to the first count a *nolle prosequi* was entered. The second count charged the defendant with holding one

E. W. Fields in a condition of peonage to work out a debt which the defendant claimed the said Fields owed to him. The third count charged the defendant with having had the said Fields arrested for the purpose of compelling him, by involuntary servitude, to pay the said debt.

Defendant demurred to the second count on the grounds, among others:

1. That the count shows on its face that the said Fields was convicted and fined by a court of competent jurisdiction for selling mortgaged property, which was an offense against the laws of Alabama; that upon said conviction and assessment of the fine and fixing costs, said court allowed said Fields and the defendant herein to confess judgment in accordance with the terms of section 7632 of the Code of Alabama.

2. That thereupon said Fields entered into a written contract with defendant to perform work and labor for him for a certain time, and said Fields failing and refusing to perform the contract, the defendant threatened Fields with criminal prosecution and did have the said Fields arrested in accordance with the provisions of section 6846 of the Code of Alabama.

Defendant further demurred severally to the second and third counts of the indictment on the following grounds:

1. That the facts averred in each of said counts do not constitute a holding, arrest, or returning of the said Fields to a condition of peonage within the meaning of section 5526, Revised Statutes.

2. That the facts averred do not show that the defendant caused to be held, arrested, or returned or that he did in any manner aid in the arrest or return of said Fields to a condition of peonage within the meaning of section 5526, Revised Statues.

3. That the facts averred in said counts do not show that the defendant held the said Fields in involuntary servitude or labor as a peon in liquidation of any debt or demand claimed by the defendant against the said Fields, within the meaning of section 1990, Revised Statutes.

The lower court sustained the demurrers, holding—

1. That neither the said second nor third count makes a case of involuntary servitude or peonage, or shows any violation of section 5526, Revised Statutes.

2. That if the constitutionality of section 6846 of the Alabama Code (under which defendant was proceeding) is involved in this case, it should not be declared unconstitutional.

Case No. 1063 is identical in facts. In that case, however, the defendant filed a special plea in bar to the indictment setting up the Alabama statutes in accordance with which he had proceeded, to which plea the United States demurred on the grounds, among others—

1. That the Alabama statutes permit peonage in violation of the laws of the United States.

2. That the Alabama statutes are in violation of section 1990, Revised Statutes.

3. That the Alabama statutes are in violation of section 5526, Revised Statutes.

4. That section 6846 of the Code of Alabama, pleaded by the defendant, is violative of the thirteenth amendment of the Constitution of the United States.

The demurrer was overruled, the lower court referring to its opinion in the case of *United States* v. *Broughton* for a fuller expression of its views, and the United States having declared its purpose to stand upon its demurrer to the special plea in bar, the court entered its order and judgment sustaining the said plea.

The decision of this court herein will determine the disposition of a number of similar cases which, being now depending in court, are held in abeyance pending such decision, and will also affect several thousand persons who are being held under circumstances like those obtaining in these cases.

Opposing counsel concur.

JOHN W. DAVIS,
Solicitor General.

MAY, 1914.

○

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Therefore the confession of judgment on the part of the convicts operated to discharge them, and the State had no right or power to further restrain their liberty 20

2. The indebtedness for the satisfaction of which the labor is to be performed is an indebtedness to the surety and not to the State—a private debt, not a public penalty 20

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In the Supreme Court of the United States.

OCTOBER TERM, 1914.

THE UNITED STATES, PLAINTIFF IN ERROR, *v.* J. A. REYNOLDS.	No. 478.
THE UNITED STATES, PLAINTIFF IN ERROR, *v.* G. W. BROUGHTON, ALIAS GIDEON W. Broughton.	No. 479.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ALABAMA.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

These are writs of error sued out under the Criminal Appeals Act of March 2, 1907, 34 Stat. 1246, to the District Court of the United States for the Southern District of Alabama. In No. 478, *United States* v. *J. A. Reynolds*, the court below entered a judgment sustaining a special plea in bar, and in No. 479, *United States* v. *G. W. Broughton*, sustaining a

demurrer to the indictment, basing its judgment upon the construction of the statute upon which the indictment was founded. The opinion of the court (No. 479, R. 8) may be found in 213 Fed. 345.

Both indictments were returned under section 269, Criminal Code (R. S., 5526), and charged the defendants with violating the laws of the United States against peonage, which are as follows:

Section 1990, R. S.:

> The holding of any person to service or labor under the system known as peonage is abolished and forever prohibited in the Territory of New Mexico, or in any other Territory or State of the United States; and all acts, laws, resolutions, orders, regulations, or usages of the Territory of New Mexico, or of any other Territory or State, which have heretofore established, maintained, or enforced, or by virtue of which any attempt shall hereafter be made to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise, are declared null and void.

Section 269, Criminal Code (R. S., 5526):

> Whoever holds, arrests, returns, or causes to be held, arrested, or returned, or in any manner aids in the arrest or return of any person to a condition of peonage, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

Briefly stated, the facts are these:

No. 478. United States v. J. A. Reynolds.

Ed Rivers was convicted during the May term, 1910, in the County Court of Monroe County, in the State of Alabama, of the offense of petit larceny, and was fined the sum of $15, with judgment for the further sum of $43.75 costs. Thereupon the defendant J. A. Reynolds, as surety for Rivers, confessed judgment with him for the aggregate amount of the fine and costs, which he afterwards paid to the State. On the 4th day of May, 1910, Rivers agreed by written contract with the defendant Reynolds to work for him as a farm hand for the term of 9 months and 24 days, at the rate of $6 per month, to pay the amount of said fine and costs (R. 2). He entered the service of Reynolds under this contract, and, under threats of arrest and imprisonment if he ceased to perform such work and labor, he continued to work for Reynolds until the 6th day of June, when he refused to labor further. Thereupon Reynolds caused a warrant to be issued by the County Court of Monroe County for his arrest on the charge of violating his contract of service. He was arrested, convicted and fined the sum of 1 cent for violating his contract, with the additional amount of $87.05 costs, for which he once more confessed judgment with G. W. Broughton as his surety, and entered into a similar contract with Broughton to work for him as a farm hand at the same rate for the term of 14 months and 15 days, under like

penalties, and Broughton thereupon paid Reynolds the amount which he claimed that Rivers owed to him (R. 4).

To the indictment setting up these facts the defendant Reynolds filed his special plea in bar admitting in substance the averments of the indictment and justifying under the statutes of the State of Alabama as found in the Code of Alabama, 1907, sections 7632, 7633, 7634, 7635, and 6846 (R. 5, 7). This plea the court sustained, over the objection of the United States, and judgment was entered accordingly.

No. 479. United States v. G. W. Broughton.

E. W. Fields was convicted during the July term, 1910, in the County Court of Monroe County, in the State of Alabama, of the offense of selling mortgaged property, and was fined in the sum of $50, with judgment for the further sum of $69.70 costs. Thereupon the defendant G. W. Broughton, as surety for Fields, confessed judgment with him for the aggregate amount of the fine and costs, and afterwards paid the same on behalf of Fields to the State. On the 8th day of July, 1910, Fields agreed by written contract with the defendant Broughton to work for him as a farm and logging hand for the term of 19 months and 29 days, at the rate of $6 per month, to pay the amount of said fine and costs (R. 3). He entered the service of Broughton under this contract, and, under threats of arrest and imprisonment if he ceased to labor for him, he continued so to do until the 14th

day of September, 1910, when he refused to labor further. Thereupon Broughton caused a warrant to be issued by the County Court of Monroe County for his arrest on the charge of violating his contract of service, and in pursuance of this warrant the said Fields was duly arrested.

To the indictment setting up these facts the defendant Broughton interposed a demurrer insisting that the facts stated did not constitute an offense within the true construction and meaning of section 5526 of the Revised Statutes, and that his conduct in the premises was justified by sections 7632, 7633, 7634, 7635, and 6846, Code of Alabama, 1907 (R. 5). This demurrer the court below sustained and entered judgment accordingly.

Alabama statutes.

The sections of the Alabama Code relied upon are as follows:

> **7632. Confession of judgment by defendant for fine and costs.**—When a fine is assessed, the court may allow the defendant to confess judgment, with good and sufficient sureties, for the fine and costs.
>
> **7633. Execution issues as in civil cases.**—Execution may issue for the fine and costs, or any portion thereof remaining unpaid, as in civil cases.
>
> **7634. On default in payment of fine and costs, imprisonment or hard labor imposed.**—If the fine and costs are not paid, or a judgment confessed according to the provisions of

the preceding section, the defendant must either be imprisoned in the county jail, or, at the discretion of the court, sentenced at hard labor for the county as follows: If the fine does not exceed twenty dollars, ten days; if it exceeds twenty and does not exceed fifty dollars, twenty days; if it exceeds fifty and does not exceed one hundred dollars, thirty days; if it exceeds one hundred and does not exceed one hundred and fifty dollars, fifty days; if it exceeds one hundred and fifty and does not exceed two hundred dollars, seventy days; if it exceeds two hundred and does not exceed three hundred dollars, ninety days; and for every additional one hundred dollars, or fractional part thereof, twenty-five days.

7635. When additional hard labor imposed for costs; rules in reference to.—If on conviction judgment is rendered against the accused that he perform hard labor for the county, and if the costs are not presently paid or judgment confessed therefor, as provided by law, then the court may impose additional hard labor for the county for such period, not to exceed ten months, as may be sufficient to pay the costs, at the rate of seventy-five cents per day, and the court must determine the time required to work out such costs at that rate; and such convict must be discharged from the sentence against him for costs on the payment thereof, or any balance due thereon, by the hire of such convict, or otherwise; and the certificate of the judge or clerk of the court in which the conviction was had, that the costs, or the residue thereof, after deducting

the amount realized from the hire of the convict, have been paid, or that the hire or labor of the convict, as the case may be, amounts to a sum sufficient to pay the costs, shall be sufficient evidence to authorize such discharge.

6846. Failure of defendant to perform contract with surety confessing judgment for fine and costs.—Any defendant, on whom a fine is imposed on conviction for a misdemeanor, who in open court signs a written contract, approved in writing by the judge of the court in which the conviction is had, whereby, in consideration of another becoming his surety on a confession of judgment for the fine and costs, agrees to do any act, or perform any service for such person, and who, after being released on such confession of judgment, fails or refuses without good and sufficient excuse, to be determined by the jury, to do the act, or perform the service, which in such contract he promised or agreed to do or perform, must, on conviction, be fined not less than the amount of the damages which the party contracting with him has suffered by such failure or refusal, and not more than five hundred dollars; and the jury shall assess the amount of such damages; but no conviction shall be had under this section, unless it is shown on the trial that such contract was filed for record in the office of the judge of probate in the county in which the confession of judgment was had, within ten days after the day of the execution thereof.

SPECIFICATIONS OF ERROR.

While the assignments of error are numerous, they all go, in No. 478, to the action of the court in sustaining the special plea in bar, and in No. 479 to the action of the court in sustaining the demurrer.

They raise the single question whether the acts alleged in these indictments constitute a crime within the meaning of the Criminal Code, section 269 (R. S., 5526), and, in sequence, whether section 6846 of the Code of Alabama, 1907, under color of which these acts were done, is in conflict with sections 1990 and 5526 of the Revised Statutes, and in violation of the Thirteenth Amendment to the Constitution of the United States.

ARGUMENT.

I.

The indictments charge an offense within the meaning of the Federal peonage act.

That the peonage act of March 2, 1867 (R. S., secs. 1990 and 5526; Criminal Code, sec. 269), is a valid exercise of congressional power under the Thirteenth Amendment is of course well settled. *Clyatt* v. *United States*, 197 U. S. 207; *Bailey* v. *Alabama*, 219 U. S. 219. It is equally beyond dispute that one who is compelled to work for his creditor until his debt is paid is in a state of peonage even though he may have contracted to perform the labor which is sought to be compelled. As said by this court in the *Clyatt* case, *supra* (p. 215):

The constitutionality and scope of sections 1990 and 5526 present the first questions for our consideration. They prohibit peonage. What is peonage? It may be defined as a status or condition of compulsory service, based upon the indebtedness of the peon to the master. The basal fact is indebtedness. As said by Judge Benedict, delivering the opinion in *Jaremillo* v. *Romero*, 1 N. Mex. 190, 194: "One fact existed universally; all were indebted to their masters. This was the cord by which they seemed bound to their masters' service." Upon this is based a condition of compulsory service. Peonage is sometimes classified as voluntary or involuntary, but this implies simply a difference in the mode of origin, but none in the character of the servitude. The one exists where the debtor voluntarily contracts to enter the service of his creditor. The other is forced upon the debtor by some provision of law. But peonage, however created, is compulsory service, involuntary servitude. The peon can release himself therefrom, it is true, by the payment of the debt, but otherwise the service is enforced. A clear distinction exists between peonage and the voluntary performance of labor or rendering of services in payment of a debt. In the latter case the debtor, though contracting to pay his indebtedness by labor or service, and subject like any other contractor to an action for damages for breach of that contract, can elect at any time to break it, and no law or force compels performance or a continuance of the service. We need not stop to consider

> any possible limits or exceptional cases, such as the service of a sailor, *Robertson* v. *Baldwin*, 165 U. S. 275, or the obligations of a child to its parents, or of an apprentice to his master, or the power of the legislature to make unlawful and punish criminally an abandonment by an employe of his post of labor in any extreme cases. That which is contemplated by the statute is compulsory service to secure the payment of a debt;

and any State legislation which seeks to compel service or labor in payment of a debt, and makes it a crime to fail or refuse to perform it, is forbidden by the letter and spirit of both the peonage act and the Constitution itself. *Bailey* v. *Alabama*, *supra*.

According to the averments of these indictments, a person convicted of a misdemeanor is sentenced to payment of fine and costs, and procures another to stand as surety for the amount, who afterwards in due course pays it to the State. With this surety the convict enters into a voluntary contract for work and labor, to continue at a fixed rate until the surety shall be reimbursed for the money he has paid. This labor, be it noted, is not to be performed to earn money for the State, but to repay to the so-called surety money paid on the convict's account. The terms, time, and character of service are matters of purely private contract between the parties, with which the State has no concern, notwithstanding the requirement of approval by the judge; and until the convict has in some way broken his agreement the State has washed its hands

of the whole transaction. He labors, however, under the constant threat of arrest and prosecution if he ceases; and should he do so, this threat is made good by a new arrest and a new prosecution for the new crime—the "violation of a criminal contract"—and a new sentence for an increased amount; this to be liquidated, perhaps, by a similar contract, attended by similar pains and penalties, and so on *ad infinitum*.

Once bound to this wheel, there is no escape, and the life of the Father of the Marshalsea was not more devoid of hope. The debtor is compelled by duress and threats, under penalty of the law, to work for his creditor until his debt is paid. Are not those who seek to keep him in this condition, whether by threats or by process of law, guilty under the peonage act?

There can be but one answer to this question if, as we think, the Alabama statute, under color of which these things are done, is obnoxious to the Thirteenth Amendment.

II.

Section 6846, Code of Alabama, 1907, supra, is unconstitutional as in conflict with the Thirteenth Amendment and with the legislation authorized by it and enacted by Congress.

It is insisted, however, that section 6846 of the Code of Alabama permitting these contracts authorizes involuntary servitude only as a punishment for crime whereof the party has been duly convicted, and thus escapes the constitutional inhibition.

History of the act.

The statute in question made its first appearance, though in a form slightly different from the present, in 1883, under the title of "An act to better secure payment of fines and costs in criminal cases in the courts of this State." See acts of the General Assembly of Alabama, session 1882–83, No. 93, p. 166. It has continued on the statute books as section 3832, Code of 1887; section 4751, Code of 1896; and now section 6846, Code of 1907. It is much younger than the other provision of the law which permits one convicted of a misdemeanor to confess judgment, with sureties, for the fine and costs in lieu of immediate cash payment. This latter provision, now section 7632 of the Alabama Code, 1907, *supra*, was enacted, as were also sections 7633, 7634, and 7635, as part of the Penal Code adopted February 23, 1866. (See Laws of Alabama, 1865; act 114, p. 121.) Such suretyships, therefore, were in 1883 well known to the law; and by the act now in question the payment of fines and costs was apparently to be "better secured" only by rendering the position of surety more attractive and profitable.

The Alabama decisions.

The constitution of the State of Alabama (1868, art. 1, sec. 35) forbids involuntary servitude otherwise than for the punishment of crime, of which the party shall have been duly convicted, following substantially the language of the Thirteenth Amendment.

On this ground the constitutionality of the statute under consideration was promptly challenged in the Alabama courts, and was upheld by the Supreme Court of that State in *Lee* v. *State*, 75 Ala. 29. The court said (p. 31):

> The appellant in this case was indicted under the act "to secure payment of fines and costs in criminal cases," approved February 23d, 1883. Sess. Acts, 166. There was a demurrer to the indictment, alleging the unconstitutionality of the statute, which the court overruled. The particular objection to the statute is, that it authorizes the imprisonment for debt. We do not so understand the statute. The charge against the defendant was, not that he refused to pay a debt he had contracted, but that he ran away from the hard labor imposed on him as a punishment for the offense he had committed. He had not worked out the sentence to hard labor, to which he had been condemned. The statute was conceived in the most humane spirit, and offers to convicted offenders the opportunity of selecting their own task masters, the kind of service they will render, and of having a voice in the measure of compensation. All these advantages the statute secures to them, if they are so fortunate as to find a friend who will trust them. The confessed judgment, and the contract approved by the court, do not satisfy the offended law, nor pay the penalty imposed. They are but the condition on which the offender is permitted to select how and whom he will serve, in satis-

> fying the broken law. No one would question the constitutionality of a statute, making it indictable for one sentenced to hard labor, to escape or flee from the service. We regard the present statute as substantially that identical thing, tempered to the offender by a humane impulse; and hence we hold it constitutional. 4 Cooley's Blackstone, 5, note 3.

To this view that court has steadily adhered saying that—

> The surety confessing judgment with the defendant for the fine and costs becomes the transferee of the right of the State to compel the satisfaction of the fine and costs by exacting the involuntary servitude of the defendant, "who himself contracts to change masters for this purpose";
>
> *Smith* v. *State*, 82 Ala. 40;
>
> *Ex parte Davis*, 95 Ala. 9–16;

and that

> the service to which the defendant was bound under the contract with his employer, as authorized by the statute, was penal. He was in contemplation of law performing labor or service as a punishment, as if sentenced to hard labor for the county. The confessed judgment, and the contract approved by the court in such cases, do not pay the penalty imposed, but are the conditions, as we have held, on which the offender, by the humane provisions of the law, is permitted to elect how and whom he will serve in satisfying its broken demands. The hirer becomes the

> transferee of the State to compel the satisfaction of the fine and costs, in the manner provided for in the contract, and for nothing more. The failure to perform service under any contract not made in this manner prescribed by statute, for the purposes therein specified, is not denounced as criminal.
>
> *Shepherd* v. *State*, 110 Ala. 104, 105.

And, again:

> Under a valid contract, the status of the defendant is that of a convict. The legal relations existing between him and the hirer is substantially the same as the one that would exist between him and the State when he has been sentenced to perform hard labor.
>
> *Simmons* v. *State*, 139 Ala. 149, 151.

And so in these and other cases the court has been consistent in holding that if the contract of hiring goes beyond the payment of the amount of the fines and costs, and covers other advances (*Winslow* v. *State*, 97 Ala. 68), or costs imposed without authority (*Simmons* v. *State, supra*), the contract is unauthorized by statute, and to attempt to hold the convict under it is imprisonment for debt and unlawful.

To this view of the matter the judge of the District Court for the Middle District of Alabama assented in his charge to the grand jury in the *Peonage Cases*, 123 Fed. 671, 683, saying:

> If a defendant, convicted of a misdemeanor, signs in open court a written contract, approved in writing by the judge, in consideration of another becoming his surety on con-

> fession of judgment for the fine and costs, and is thereupon released, the law of the state treats him as a convict who has resigned himself to the custody of his surety to escape that of the state, and the surety may restrain him of his liberty, and invoke the aid of the state law to compel the service. This provision applies only to cases in which there has been a lawful conviction, and a written contract, signed in open court, approved in writing by the judge. The contract can not extend beyond securing the fine and costs while they are being worked out. It can not be made, as has been repeatedly declared by the Supreme Court of this State, the basis of a contract for additional service on payment of advances, and the convicted person can not be held in involuntary servitude for their payment.

The court below in the instant cases shared the same opinion.

With great respect for these learned authorities, we submit that they make of this statute something entirely other than it is, that they rest their conclusions upon an utterly false premise, and are no more to be followed than was the Supreme Court of Alabama in its numerous decisions on the parallel statute disposed of by this court in *Bailey* v. *Alabama*, *supra*.

Their whole argument is based upon a supposed identity or analogy between the status of a convict who has been sentenced to hard labor in default of

payment of his fine, and that of a convict who has given security to the State for its payment and contracted to labor for his surety; between the custody of the former by the State, or by some one to whom the State has leased him under some convict labor law, and the contract obligation of the latter to his chosen employer; between an escape in the former instance and a breach of contract in the latter.

It is believed that no such identity or analogy exists, and that an examination of the cases at bar will make this abundantly clear. To this we address ourselves.

1. No sentence of involuntary servitude ever was or ever could have been imposed by the State, and therefore the State had no right in the labor of these convicts, nor could it transfer such right to anyone.

It is of course conceded that one who has been convicted and sentenced to the payment of a fine and costs may, upon default in payment, be either imprisoned or exposed to involuntary servitude. Fines and costs are not debts within the meaning of those constitutional provisions which forbid imprisonment for debt or involuntary servitude, and unquestionably the State may, within proper limits, use force to compel payment. This is, however, a sovereign power, to be exercised by the State itself, and one which it can not delegate to any private citizen. If the liberty of the citizen is to be impaired, it can only be as the result of a judgment of a court, and for such period as the court or the legislature may in the name of the State determine.

Moreover, where the original sentence names as the sole penalty the payment of a fine and costs, only the subsequent default of the convict in satisfying the sentence can warrant either his imprisonment or servitude. As soon as he has made satisfaction of the fine and costs, his liberty can no more be restrained than that of the most impeccable of his fellow-citizens who has never come into collision with the law. The mere fact of conviction and the imposition of a fine and costs gives to the State no present right in the convict's person or labor; that right arises only when he has actually made default in answering the State's demand.

Now, the State of Alabama, as the statutes show (sec. 7632, *supra*), provided as early as the year 1866, and long before the statute in question was adopted, that in lieu of immediate payment of fine and costs the defendant might confess judgment, with sureties, for the amount. This confession operates as an immediate release no less directly than would a cash payment. And, by the language of the statutes themselves, it is only when "the fine and costs are not paid *or a judgment confessed*" that imprisonment or hard labor can be imposed under section 7634, *supra*, and it is only when on conviction "judgment is rendered against the accused that he perform labor for the county and if the costs are not presently paid *or judgment confessed therefor*" that the court may impose additional hard labor for the county under section 7635, *supra*.

With this interpretation of the Alabama law the Supreme Court of that State is in accord, saying:

> * * * It is only where the fine and costs are not presently paid, or secured by confession of judgment, with proper sureties, that any sentence to hard labor can be enforced for their satisfaction.
>
> *Bailey* v. *State*, 87 Ala. 44, 45.

And, again:

> * * * When a fine is assessed, and the fine and costs are not paid nor judgment confessed therefor as provided by section 4502 (Code of 1886), it is made the duty of the court to imprison the defendant, or sentence to hard labor, as required by the statute. Under the statute, the court may impose the alternative punishment as a part, and in continuation of the entry of the judgment of conviction; or, if deemed proper, the court may have the judgment of conviction entered, and allow the defendant a reasonable time to pay the fine and costs, or confess judgment therefor; and on failure may impose the alternative punishment at any time during the term. * * * The imposition of the sentence to hard labor may be avoided by a confession of judgment for the fine and costs; and if the judgment of conviction is reversed, the judgment confessed falls with it.
>
> *In re Newton*, 94 Ala. 431, 433–434.

And, again:

> * * * It is the duty of the court upon conviction for a misdemeanor to allow a con-

> fession of judgment with proper security for such part of the fine and cost, or either, as the defendant is able to make, with proper security, and impose the sentence for hard labor, for such part as remains not paid or confessed.
>
> *Bowen* v. *State*, 98 Ala. 83, 85.

In the cases at bar the convicts chose to satisfy the State by a confession, with security, rather than by cash. The moment that was done, the State by its own statutes declared them to be discharged, and it had no right or power to further restrain their liberty in any way. How, then, can it be said that it could lawfully assign or transfer their custody to any private employer and give to him a mastery over their persons which the State not only had not sought to exercise for itself but clearly did not at the time possess?

2. The indebtedness for the satisfaction of which the labor is to be performed is an indebtedness to the surety and not to the State—a private debt, not a public penalty.

We concede again that when a sentence to hard labor has been imposed it is entirely competent for the State either to employ the convict for itself or to hire him out for its profit. His time and labor have been confiscated by the State and, within constitutional limits, it may use them as it sees fit.

The laws of Alabama contain elaborate provisions for such hire. They provide that when the offense is punishable by imprisonment in the penitentiary or at hard labor for the county, the court must impose the term of punishment, unless the power is expressly con-

ferred upon the jury. Code of Alabama, 1907, sec. 7623. And those who are sentenced to hard labor for the county may either be employed on the public roads, bridges, or other public works in the county, or let for hire to labor as may be determined by the county commissioners or board of revenue. Code of Alabama, 1907, sec. 6580. In the latter event, careful and minute directions are given by the statute requiring an express contract of hiring, setting forth the kind and place of labor, providing for the furnishing of food, medical attendance, clothing, proper housing, and humane treatment; and directing a prompt discharge at the expiration of the convict's term of penal servitude, with a good suit of clothes, a hat, a pair of shoes, and transportation to the county seat of the county in which he was sentenced to imprisonment. Code, 1907, ch. 191, art. 5. To detain, imprison, or work the convict after the termination of his sentence, or to fail to supply him with clothing and transportation to the county of his conviction is made a crime, and visited by a heavy penalty. Code, 1907, secs. 6610, 6613. And, as the Supreme Court of Alabama has declared, the relations which so exist between the convict and his hirer are not those of master and servant, but rather of prisoner and keeper. *Buckalew* v. *Tenn. Coal, Iron and R. R. Co.*, 112 Ala. 146, 156.

But, in the instant cases, as we have said, the servitude is not the result of any action by the State; it has never been decreed by any of its courts; it is not

founded upon any contract of letting between the State and the convict's employer or custodian. It arises solely by conventional agreement between two private parties, the convict and his surety, expressed in terms of a written contract. The fact that this instrument must be attended with the formalities of signature in open court, approval in writing by the trial judge, and recordation in the office of the judge of probate, no more destroys its purely contractual character than do the usual solemnities required upon the execution of a deed, such as its signing, sealing, acknowledgment before a notary, and entry upon the public records.

These contracts have evidently assumed a stereotyped form. We repeat here one of those in question (No. 478, R. 2):

"LABOR CONTRACT.

"THE STATE OF ALABAMA,
Monroe County:

"Whereas, at the May term, 1910, of the county court, held in and for said county, I, Ed. Rivers was convicted in said court of the offense of petit larceny and fined the sum of fifteen dollars, and judgment has been rendered against me for the amount of said fine, and also in the further and additional sum of forty three & 75/100 dollars, cost in said case, and whereas J. A. Reynolds, together with A. C. Hixon, have confessed judgment with me in said court for said fine and cost. Now, in consideration of the premises, I, the said Ed. Rivers, agree to work and labor for him,

the said J. A. Reynolds, on his plantation in Monroe County, Alabama, and under his direction as a farm hand to pay fine and cost for the term 9 months and 24 days, at the rate of $6.00 dollars per month, together with my board, lodging, and clothing during the said time of hire, said time of hire commencing on the 4 day of May, 1910, and ending on the 28 day of Feby., 1911, provided said work is not dangerous in its character.

"Witness our hands this 4 day of May, 1910.

"Ed (his x mark) Rivers.

"J. A. Reynolds.

"Witness:

"John M. Coxwell."

It is true that the convict here agrees in terms to work and labor for his surety to pay the "fine and cost"; but while this phrase is accurate to describe the origin or history of the debt, it is inaccurate as applied to the debt itself, which is clearly "the amount of the fine and costs paid by the surety on his principal's behalf."

Of course, when the agreement is entered into the surety has already paid the amount due to the State, or it is contemplated by all parties that he will certainly do so. It is not sheer affection or gratitude for the surety's entry into the barren relation of guarantor that moves the convict to bind himself to prolonged and ill-paid labor. Indeed, in the cases at bar the indictments expressly allege that the payments to the State were in fact made. The State is content; its demands are satisfied. What is there left but the

debt of the principal to his surety and the common-law duty to reimburse the latter, which might be enforced even without an express contract? If the relation thereafter existing between the principal and his surety be not that of debtor and creditor, what is it?

The purely private character of the arrangement is emphasized when we recall the fact, heretofore adverted to, that these confessed judgments by convicts and their sureties were known to the law of Alabama long before there was any effort to enforce these labor contracts by penal sanctions. Section 212 of the Penal Code adopted by the General Assembly of that State on February 23, 1866, provided that "where a fine is assessed, the court may allow the defendant to confess judgment, with good and sufficient sureties, for the fine and costs." So the law has remained during successive revisions, and so it is found in section 7632 of the Code of 1907, *supra*.

To ascertain the relationship between the parties and the State upon such confession, we have but to quote again the Supreme Court of the State of Alabama.

> * * * The argument here is, that the sum sought to be collected is a fine for a misdemeanor, and the confessed judgment and execution thereon are only methods of collecting that fine. This may be true of the liability of the principal in the confessed judgment. With the sureties it is different.

> There is no public offense, tort, or wrong imputed to them. In becoming Coles' sureties, they in no sense became participants in the public wrong of which he was convicted. This was a civil liability—a mere promise to pay money, evidenced by the judgment they confessed. It was a civil proceeding, with all the attributes of a civil proceeding.
>
> *State* v. *Allen* (1882), 71 Ala. 543, 545.

Later, when the surety under one of these contracts claimed the right to the custody of the convict as against the State itself, the court said:

> The state was in no sense a party to the contract by which the company acquired the custody of Falkner (*State* v. *Etowah Lumber Co.* (1907), 153 Ala. 77, 78);

and accordingly held that he might be arrested and taken from the custody of his employer. This decision seems to be at hopeless variance with the earlier doctrine that the surety under these contracts was the "transferee" of the right of the State to hold the convict in custody for the satisfaction of the penalty imposed upon him.

So, when the unfortunate convict is arrested under the provisions of section 6846 it is not for the offense of failing to pay to the State its fine and costs, but for failing to reimburse one who has paid it for him. He is charged, not with escaping from the custody of the law, which no longer has any claims upon him, or from the State, to whose treasury he is no longer indebted, but with "violating a criminal contract"; and out of the fine which may then be imposed upon

him, if convicted, the damages sustained by the party contracting with such defendant must be paid to such person by the officer collecting the same. Code of Alabama, 1907, sec. 6848.

In the language of this court with which this discussion opened, the basal fact in all these contracts and in this statute is indebtedness. This is the cord by which these laborers are bound to their masters' service.

3. There is no correlation between the penalties which the State might have imposed for nonpayment in the first instance and those fixed by these labor contracts.

We have argued that the State can not transfer or delegate to any private individual its power to punish; and that it can transfer to a private citizen its right in the labor of another only when that right is consummate in the State at the time of transfer. To this we add that it certainly can not transfer to another the power to compel a greater service than it could itself exact.

The convict-labor laws of Alabama recognize this principle in requiring one who has hired a convict from the State or county to discharge him the moment his fixed term of penal servitude has expired. But no such benign rule tempers the severity of these "labor contracts."

In No. 478, *United States* v. *J. A. Reynolds*, Ed Rivers was convicted of petit larceny and sentenced to the payment of a fine of $15 and $43.75 costs. In default

of payment of the fine, he might have been sentenced under section 7634, Code of Alabama, 1907, *supra*, to hard labor for the county for 10 days, during which time, of course, he would have received his board, lodging, and, if necessary, clothing; and if he could have been sentenced to labor for costs, under section 7635, Code of Alabama, 1907 (as to which the language of the statute creates a doubt), at the rate of 75 cents a day, 58 additional days might have been added, making a total maximum sentence to hard labor of 68 days. At the end of that time he would have gone acquit. With the approval of the court, however, he is permitted to enter into a "humane" contract to labor for 9 months and 24 days, receiving only his board, lodging, and clothing. In other words, the private employer is permitted to exact more than four times the amount of labor which the State itself could have demanded.

One month later he finds himself under arrest for the breach of this contract. He is fined the sum of 1 cent, with $80.75 costs, and thereupon confesses judgment once more and binds himself upon similar terms to work for one G. W. Broughton for the term of 14 months and 15 days.

Here ends his story as disclosed by the record now before the court. But by way of illustrating the possibilities of this system we may suggest—without drawing entirely upon the imagination—that, having broken this second contract, Rivers was again arrested, fined this time $300, with $112.80 costs, and sentenced, in default of payment, to hard labor for more than

one year. One wonders what terms a surety would have been able to extort if one had then appeared!

The only recorded parallel to this cumulation of sentences is that found in the story of Jean Valjean.

So, in No. 479, E. W. Fields was fined $50 for selling mortgaged property, with $69.70 costs, and upon default might have been condemned at most to an aggregate of 113 days, or less than 4 months of labor for the State; yet his custody is "transferred" to G. W. Broughton for the incredible period of 19 months and 29 days!

So far from the statute which permits such things being a humane law, which allows the convict to choose his own master, it would seem rather to be a most ingenious engine of oppression. If the Constitution did not stand in its path, reason and public policy should. *State* v. *Stanley*, 52 Ark. 178. And, as we have sought to show, the fiction put forward in its defense, which treats the hirer as standing *in loco civitatis*, and the laborer as still in the custody of the law, has neither fact nor logic to support it.

CONCLUSION.

The judgments below should be reversed and the cases remanded, with directions, respectively, to reject the special plea in bar and overrule the demurrer, and further to proceed as justice may require.

JOHN W. DAVIS,
Solicitor General.

AUGUST, 1914.

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ALABAMA PEONAGE CASES.

NOS. 478 AND 479.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1914.

THE UNITED STATES, *Plaintiff in Error,*

v.

J. A. REYNOLDS.

THE UNITED STATES, *Plaintiff in Error,*

v.

G. W. BROUGHTON, *alias* GIDEON W. BROUGHTON.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ALABAMA.

BRIEF FOR THE DEFENDANTS IN ERROR.

BROWN PRINTING CO., MONTGOMERY, ALA.

ALABAMA PEONAGE CASES.

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IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ALABAMA.

BRIEF FOR THE DEFENDANTS IN ERROR.

STATEMENT OF THE CASE.

We have but one criticism to make of the statement of the case as set out in the brief for the government. On page 4, line 1, it is stated that "Broughton thereupon paid Reynolds the amount which he claimed that Rivers owed to him (R. 4)." Page 4 of the record contains the following:

> "Thereupon the said G. W. Broughton, at the request of the said Ed Rivers, paid the amount of said judgment, out of which amount so paid by the said G. W. Broughton, alias Gideon W. Broughton, the said J. A. Reynolds was paid the amount which he claimed the said Ed Rivers then owed him."

The following relevant Alabama statute is not cited in the brief of the government:

> Sec. 6848.—*Damages Paid to Injured Party Out of Fine Imposed.*—From the fine imposed under the two preceding sections, when collected, the damages sustained by the party contracting with such defendant must be paid to such person by the officer collecting the same.

It will be seen that under the statute Broughton would have had to pay the fine and costs to the officer whose duty it was to collect the same; that that officer, under Section 6848 of the Code, could not have paid to Reynolds more than the fine imposed, which was one cent (Record, p. 4); and that this fine could not have been the alleged debt of the convict to the surety Reynolds; that therefore the statement above quoted from the brief of the solicitor general is erroneous.

THE CONTENTION HEREIN.

There is but one point in these cases: Does the offense of peonage exist by virtue of the operation of Sections 7632 and 6846 of the Code of Alabama?

ARGUMENT.

I.

PEONAGE BASED ON INDEBTEDNESS.

The offense of peonage, which was sought to be abolished by Section 1990, R. S., and for the commission of which punishment was prescribed by Section 5526, R. S., (Criminal Code, Section 269) has been defined by this and other courts as a status or condition of compulsory service based upon the indebtedness of the peon to the master. The basal fact is indebtedness. This is the cord by which the peon is bound to his master's service.

Jaremillo v. Romero, 1 N. Mex. 190, 194;
Peonage Cases, 123 Fed. 671, 673 (Ala.);
United States v. McClellan, 127 Fed. 971; 976, 979 (Ga.);
Peonage Cases, 136 Fed. 707, 708 (Ark.);
In re Peonage Charge, 138 Fed. 686, 687 (Fla.);
United States v. Cole, 153 Fed. 801, 805, (Tex.);
United States v. Clement, 171 Fed. 974, 975 (S. C.);
Clyatt v. United States, 197 U. S. 207, 215;
Hodges v. United States, 203 U. S. 1, 33.

"A peon is one who is compelled to work for his creditor until his debt is paid. * * * * The peon can release himself from his servitude by the payment of his debt, but otherwise the service is enforced. * * * * That which is contemplated by the statute is compulsory service to secure the payment of a debt."

Bailey v. State, 219 U. S. 219, 242, 243.

II.

WHAT IS "DEBT?"

For the meaning of "debt" we shall refer to the construction of constitutional and statutory provisions with realtion to imprisonment for debt.

Alabama is one of the states, if not the only one, in which imprisonment for debt is absolutely prohibited. Most of the states provide that the person of the debtor, where there is not strong presumption of fraud, shall not be detained in prison after delivering up his estate for the benefit of his creditors in such manner as shall be prescribed by law; but the Constitution of Alabama provides "That no person shall be imprisoned for debt."—*Constitution* 1901, Section 21.

Such provisions "apply only to actions based on contracts, express or implied, and * * * * do not extend to actions originating in tort."

Ex parte Hardy, 68 Ala. 303, 316.

> "It is not to be supposed, that the farmers of the Constitution intended to prohibit the legislature from authorizing the remedy of incarceration as a means to coerce the payment of damages originating ex delicto, but only of a debt originating ex contractu. Where the property of another than the debtor has been taken by fraud or violence, or is withheld so as to tortiously deprive the true owner of his rights, the act is *quasi* criminal, and the prohibition as to imprisonment has no application."

Ex parte Hardy, supra, p. 317.

The sentence of a convict to additional imprisonment for embezzlement in lieu of his restoring to the injured party

the amount embezzled is not regarded as imprisonment for debt, such imprisonment being prohibited in the Philippine Islands by Congress.—Act of July 1, 1902, 32 St. L. 691.

> "Statutes relieving from imprisonment for debt were not intended to take away the right to enforce criminal statutes and punish wrongful embezzlements or conversions of money. It was not the purpose of this class of legislation to interfere with the enforcement of such penal statutes, although it provides for the payment of money as a penalty for the commission of an offense. Such laws are rather intended to prevent the commitment of debtors to prison for liabilities arising upon their contracts."—*McCool v. State*, 23 Indiana, 129; *Musser v. Stewart*, 21 Oh. St. 353; *Ex parte Cottrell*, 13 Nebraska, 193; *In re Ebenhack*, 17 Kansas, 618, 622.

This general principle does not seem to be controverted by the learned counsel for the plaintiff in error, and the argument is, that inasmuch as the money adjudged is to go to the creditor, and not into the public treasury, imprisonment for the non-payment of such sum is an imprisonment for debt. But we think that an examination of the statutes of the Philippines and the judgment of the Supreme Court shows that the imposition of the money penalty was by way of punishment for the offense committed, and not a requirement to satisfy a debt contractual in its nature or be imprisoned in default of payment.

Sec. 5, article 535, of the Penal Code, provides that those who, to the prejudice of another, shall appropriate or misapply any money, goods or any kind of personal property which they may have received as a deposit on commission for administration, or in any other character, producing the obligation to deliver or

return the same, or who shall deny having received it, shall incur certain penalties. As a further means of punishing the act done in violation of the statute he may, under the Philippine Code, be made to suffer a subsidiary imprisonment for a term not to exceed one-third of the principal penalty in lieu of the restoration of the sum found to be embezzled. The sentence of the Supreme Court of the Philippine Islands, including the imprisonment in lieu of the payment of the sum found due, was because of the conviction for the violation of this statute—in other words, the money payment was part of the punishment and was not imposed as an imprisonment for non-payment of the debt, regardless of the criminal offense comitted. The sentence and each part of it was imposed because of the conviction of the defendant of the criminal offense charged.

This situation is not changed because the sentence provides for a release from the subsidiary imprisonment upon payment of the money wrongfully converted. The sentence imposed, nevertheless, includes the requirement to pay money because of the conviction of the offense. The requirement that there shall be no imprisonment for debt was intended to prevent the resort to that remedy for the collection of contract debts, and not to prevent the State from imposing a sentence for crime which should require the restoration of the sum of money wrongfully converted in violation of a criminal statute. The non-payment of the money is a condition upon which the punishment is imposed.—*State of Maryland v. Nicholson*, 67 Maryland 1.

We do not think that the sentence and judgment violated the statute providing that no person shall be imprisoned for debt."

Freeman v. United States, 217 U. S. 539, 544, 545.

That such an inhibition is limited to contract liabilities, and is not applicable to fines, forfeitures, mulcts, damages for wrong and tort, is settled by a line of decisions which is practically unanimous.

Hanson v. Fowle, 1 Sawyer (U. S.) 497, 506;
United States v. Walsh, Deady (U. S.) 281, 286;
Note to Carr v. State, 34 L. R. A. (O. S.) 634, (106 Ala. 35.

Though the convict may pay the fine and costs due the State and thereby gain his release, such cannot be regarded as a debt. If it were not admitted by the solicitor-general in his brief (p. 17) the long line of decisions to that effect would be unanswerable.

Nelson v. State, 46 Ala. 186, 189;
Caldwell v. State, 55 Ala. 133, 135;
Lee v. State, 75 Ala. 29, 30;
Smith v. State, 82 Ala. 40, 41;
Ex parte King, 102 Ala. 182, 183;
Carr v. State, 106 Ala. 35, 34 L. R. A. (O. S.) 651;
Brown v. State, 115 Ala. 74, 79;
United States v. Walsh, 1 Abb. (U. S.) 66, 71;
Stroheim v. Deimel, 73 Fed. 430;
Freeman v. U. S., 217 U. S. 539, 544.

By the confession of judgment the nature of the convict's obligation is not changed so far as he is concerned; the State chooses, with his consent, to substitute for his labor and service, and imprisonment, a civil liability on the part of the surety.

Smith v. State, 82 Ala. 40;
Shepherd v. State, 110 Ala. 104, 105;
Simmons v. State, 139 Ala. 149, 150.

III.

AFTER CONFESSION OF JUDGMENT AND EXECUTION OF CONTRACT CONVICT CANNOT OBTAIN RELEASE FROM SURETY BY THE PAYMENT OF MONEY.

There is no provision in the Alabama statutes under which a convict, after the confession of judgment, can purchase his freedom by the payment of a sum of money to his surety. According to the terms of the order of the court, the defendant, after conviction and after confession of judgment, must serve the time fixed in the approved contract. His service for the surety is the only method by which he can perform the judgment, execute the sentence, and pay the penalty for his violation of the law.

In this respect his condition is not different from that of his companion similarly convicted, for whom no surety confessed judgment and whom the county leases to a private hirer who pays for his labor an agreed price.—Code, Sec. 6594, et seq.

Neither can now pay the amount of his fine, and end his service. Neither is indebted to his hirer.

IV.

PUNISHMENT UNDER SECTION 6846 FOR VIOLATION OF CONTRACT.

Under the provisions of Section 6846, the defendant may be prosecuted, not for any debt he owes his surety, for none exists, but as a punishment for a violation of the contract which has been approved by the court and in which his labor for his surety has been substituted for hard labor for the state or county. It is true that under this section the defendant must be fined not less than the amount of the damages which his surety has suffered by his failure or refusal to work, without good and sufficient excuse; but such damages cannot be regarded as a debt which the defendant owes the surety.

> "The confessed judgment, and the contract approved by the court do not satisfy the offended law, nor pay the penalty imposed. They are but the condition on which the offender is permitted to select how and whom he will serve, in satisfying the broken law."
>
> *Ward v. State*, 88 Ala. 202, 203.

> "The hirer becomes the transferee only of the right of the state to compel the satisfaction of such fine and costs, and nothing more, by exacting the involuntary servitude of the convict who himself contracts to change masters for that purpose."
>
> *Smith v. State*, 82 Ala. 40, 41.

The courts of Alabama have looked very assiduously to the strict interpretation of the contract in the convict's favor. If he be prosecuted for its violation he may offer a good and sufficient excuse therefor.

> Code, Sec. 6846.

If the surety changes the labor to some other work than that contracted for, such is a good and sufficient excuse.

Shepherd v. State, 110 Ala. 104.

If the contract provides for "advances," it is void and its performance cannot be enforced.

Smith v. State, 82 Ala. 40;
Ex parte Davis, 95 Ala. 9, 16;
Winslow v. State, 97 Ala. 68;
Elston v. State, 154 Ala. 62.

Nor if it provides for work as the surety "may direct."

Salter v. State, 117 Ala. 135, 137.

Nor if it provides for work on the farm of one man and the convict be worked on that of another.

Wade v. State, 94 Ala. 109.

The contract is not a guaranty of efficient service on the part of the convict.

Wynn v. State, 82 Ala. 55, 57.

Where the contract provides for the payment of costs only, a prosecution charging judgment confessed for fine and costs cannot be sustained.

McQueen v. State, 138 Ala. 63, 67.

It has been held that where a defendant is in the employment of his surety, he is regarded as a convict to the extent that he cannot be compelled to work the roads; such servitude being a good excuse.

Ward v. State, 88 Ala. 202.

But the minority of the convict is no defense to an indictment for leaving or escaping the service.

Wynn v. State, 82 Ala. 55, 57.

V.

THE STATE RETAINS CONTROL OF THE CONVICT.

The solicitor general in his brief argues that the State loses control over the convict when judgment has been once confessed; that the State then has no authority to sentence the convict to any punishment. If this argument be sound, the statutes of many states which permit a confession of judgment to pay the fine and costs within a limited period, the convict to be sentenced in default of such payment, would be impossible of enforcement for the reason that the State looks to another for payment.

Where the State Legislature authorizes a county to work all its convicts on the public roads of the county, without charge, providing for the costs in such cases to be paid out of the fine and forfeiture fund to the officers to whom they are due, it is held that such transfer, as to the benefits accruing from an enforcement of a satisfaction of the costs, does not in any manner change the nature of the convict's imprisonment.

Bailey v. State, 87 Ala. 44, 46.

If therefore it be legal for the officers to look to the fine and forfeiture fund for their costs when the convicts are performing extraordinary service, the principle is not different from their looking to the convict's surety for such costs.

We are confident that in interpreting the Alabama statutes on this point, the court will follow the decisions of the highest court of that State.

Shelby v. Guy, 11 Wheat. 361, 367;
Nesmith v. Sheldon, 7 How. 812, 818;

Van Rensselaer v. Kearney, 11 How. 297, 318;
Webster v. Cooper, 14 How. 488, 504;
Leffingwell v. Warren, 2 Black. 599, 603;
Haver v. District No. 108, 111 U. S. 701, 704;
Detroit v. Osborne, 135 U. S. 492, 498;
Irrigation District v. Bradley, 164 U. S. 112, 154, 155;
Hooker v. Los Angeles, 188 U. S. 314, 320;
Hariston v. Danville & Western Ry., 208 U. S. 98, 607;
Siler v. L. & N. R. R. Co., 213 U. S. 175, 191;
Trimble v. Seattle, 233 U. S. 218, 219 (S. C. Rep. p. 219).

The brief of the government (p. 25) refers to the case of *State v. Etowah Lumber Co.*, 153 Ala. 77, 78, as being hopelessly at variance with the earlier pronounced doctrine. In this case the convict was taken from the custody of his surety by virtue of a warrant issued for the commission of another offense than that for which he was then serving. The court said:

> "But a single question is presented for our decision by the record. It is whether the arrest of Falkner—he being at the time in the legal custody of The Etowah Lumber Company, and performing service under his contract with that company—was legal. If illegal, clearly the order appealed from was proper. On the other hand, unless the custody of him by the lumber company operated to exempt him from the service of legal process upon him—to the end, it may be, of depriving that company of his custody and services under their contract with him—his arrest and custody by the sheriff was lawful, and his discharge therefrom was error. The State was in no sense a party to the contract by which the company acquired the custody of Falkner. It is true it permitted the

making of the contract, and provides a punishment for its breach; but it was not a guarantor of his not violating its criminal laws after it was executed, or that he had not theretofore violated any of them. Nor is there a statue which prescribes his immunity from arrest and punishment in the event he offended any of the penal statutes. Had he theretofore, or after he began the performance of the contract, committed murder or any other felony, upon what authority could it be said that he would be immunized from arrest and punishment, thereby terminating his contract with the company? We know of none, and it is believed there is none. And, if there be no immunity from arrest upon a warrant charging the commission of a felony by him, there is no such immunity where he is charged with the commission of a misdemeanor. The Etowah Lumber Company, in making the contract with him, assumed the risk of his obedience to law while serving it, and of his not having previously committed crimes which would subject him to arrest and punishment. Certainly the State did not guarantee the company against any or all of these things."

The utterance of the court that the State was in no sense a party to the contract by which the company acquired the custody of Falkner, was not necessary to the decision of the case. Indeed, a single decision of a State court which departs from the whole course of the decisions of that State will not be followed.

Gibson v. Lyon, 115 U. S. 439, 446;
Hardin v. Jordan, 140 U. S. 371, 387.

VI.

STATUTE A HUMANE ONE.

In the instance of the convict hired out by the county, he serves in stripes under the watchful eye of an armed guard, often shackled. He spends his days in any kind of service to which his hirer orders him, his nights behind iron bars. His companion of the confessed judgment chooses to serve twice or three times as long perhaps, but, such service is usually on the farm where his family is working. His days he spends behind the plow and his nights as he may choose. If he does his duty according to his contract there is no reminder of his convict-state, save at the end of each month when his wage is withheld. He is practically a free man and "the law delights in the liberty and the happiness of the citizen."

Peonage Cases, 123 Fed. 671, 676.

VII.

THE THIRTEENTH AMENDMENT.

Upon the adoption of the Thirteenth Amendment abolishing involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted, was it supposed by its framers that it contained authority for Congress to withhold from a State the right to make its own laws for punishing those duly convicted of crime? If so, why cannot Congress go further and forbid the lease of its convicts by a state to manufacturers? Or the lease by a county to the hirer of a single convict? And indeed if Congress has authority to legislate regarding such leases there is nothing to prevent its prescribing

the kind of work to be performed, the working hours and the food and clothing furnished.

If any doubt of such lack of authority exists one has only to refer to the debates in the Congressional Globe on the adoption of the Thirteenth Amendment in the Congressional Globe, 1863-4, Part 2, pp. 1313-25, 1364-70, 1419-24, 1437-46, 1456-65, 1479-90.

If the State by its own contract has the right to let its convicts singly (Section 6594) or in groups (Section 6528), for a monthly wage per convict, is the offense of peonage commimtted when it permits the convict to select his own hirer. And if one hired out in the first instance can be punished for escaping, is the State barred in the second from punishing the convict for not laboring when it has practically given him his freedom?

The Supreme Court of the United States held that:

> "The (thirteenth) amendment was not intended to introduce any novel doctrine with respect to certain descriptions of service which have always been treated as exceptional. * * * From the earliest historical period the contract of the sailor has been treated as an exceptional one, and involving to a certain extent, the surrender of his personal liberty during the life of the contract."
>
> *Robertson v. Baldwin*, 165 U. S. 275, 282.
>
> "* * * Involuntary servitude, no matter when it arises, if it be not the result of punishment for crime of which the party has been duly convicted, is as much forbidden by the constitution as is slavery."
>
> *Ib*, p. 301.

And also:

> "We need not stop to consider any possible limits or exceptional cases, such as the service of a sailor, *Robertson v. Baldwin,* 165 U. S. 275, or the obligations of a child to its parents, or of an appren-tice to his master, or the power of the Legislature to make unlawful and punish criminally an abandonment by an employee of his post of labor in any extreme cases."

Clyatt v. United States, 197 U. S. 207, 216.

Can the court read into the Thirteenth Amendment exceptions which do not appear and refuse to give life to one exception which does appear therein? The one based on a conviction for crime?

CONCLUSION.

The facts herein show that no indebtedness exists between the convict and the surety. Hence the offense of peonage is not made out.

The power to fix punishment and provide for the disposition of convicted criminals is reserved to the states and not imposed in Congress.

The Thirteenth Amendment excepts from its operation servitude for the conviction of crime. Such servitude exists herein.

Respectfully submitted,

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UNITED STATES *v.* REYNOLDS.

UNITED STATES *v.* BROUGHTON.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ALABAMA.

Nos. 478, 479. Argued October 23, 1914.—Decided November 30, 1914.

Congress passed §§ 1990 and 5526, Rev. Stat., and § 269, Criminal Code, abolishing and prohibiting peonage under the authority conferred by § 2 of the Thirteenth Amendment to enforce § 1 of that amendment, thereby undertaking to strike down all laws, regulations and usages in the States and Territories which attempted to maintain and enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons in the liquidation of any debt or obligation.

Peonage is a condition of compulsory service based upon the indebtedness of the peon to the master. The basal fact is indebtedness. *Clyatt* v. *United States*, 197 U. S. 207.

Where a person charged with crime has, after confession, been sentenced to pay a fine and costs and then been released on the payment of a fine by a surety with whom he has made an agreement to work continuously for a specified period for the specified amount so paid for the fine and costs, as provided by the laws of Alabama, and he is liable to separate punishment if he fails to carry out the contract, the relation established between that person and the surety is that of peonage and falls within the prohibition of the Thirteenth Amendment and the laws enacted to enforce it.

Constant fear of punishment under the criminal law renders work compulsory. *Bailey* v. *Alabama*, 219 U. S. 219.

While this court follows the decisions of the state court in determining the constitutionality of state statutes under the state constitution, and ordinarily follows the construction given to such statutes by the state court, where such a decision really determines the legal effect of a state statute in a case involving the Constitution and laws of the United States, this court determines for itself whether that statute does or does not violate the Constitution of the United States and the laws passed in pursuance thereof.